

- XII. Claim 37, drawn to method for determining presence or predisposition to disease comprising measuring expression of polypeptide.
- XIII. Claim 38, drawn to method for determining presence or predisposition to disease comprising measuring expression of nucleic acid, classified in class 435, subclass 6, for example.

Applicants elect, with traverse, Group I, Claims 1-4, 29 and 32; SEQ ID NO:3.

REMARKS

Restriction is only proper if the identified groups are independent or patentably distinct (MPEP § 803). The burden is on the Office to provide reasons and/or examples to support its conclusion that the identified groups are independent or distinct.

The Office has characterized the relationship between Groups I and Groups V, VI, VII, VIII, XI, and XII as being related as product and process of use. The Office has cited MPEP § 806.05(h) and asserts that Groups V, VI, VII, VIII, XI and XII are materially different processes of using the product of Group I. The Office suggests that Group I can be used to isolate receptors. However, the Office has failed to explain how Groups V, VI, VII, VIII, XI, and XII, are materially different processes.

The Office has characterized the relationship between Groups II and Groups IV, IX, and XIII, as related as product and process of use. Again citing MPEP § 806.05(h), the Office asserts that Groups IV, IX, and XIII, are materially different processes of using the product of Group II. The Office suggests that the nucleic acids of Group II can be used to express protein

recombinantly *in vitro*. Again, however, the Office has failed to explain how Groups IV, IX, and XII are materially different processes.

The Office has characterized the relationship between Groups III and Groups X and XII as related as product and process of use. Citing MPEP § 806.05(h), the Office asserts that in this instance, Groups X and XII are materially different processes of using the product of Group III. The Office suggests that the antibodies of Group III can be used to label or isolate the polypeptides that they bind. However, no explanation has been offered to explain how Groups X and XII are materially different processes.

The Office has characterized the relationship between Group V and III as related as process of making and product made. Citing MPEP § 806.05(f), the Office states that inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different products or (2) that the product as claimed can be made by another and materially different process. The Office suggests that the process of Group V can be used to identify binding agents other than antibodies, such as small organic molecules. However, the Office has not explained how the suggested process is materially different than the process of Group V.

The Office has characterized Groups I-III and IX as directed to products that are distinct, both physically and functionally, are not required one for the other, and are therefore patentably distinct. However, no specific provision in the MPEP has been cited to support this argument. The Office has simply stated a conclusion without support or explanation.

The Office has also characterized Groups IV-XIII as directed to methods that are distinct, both physically and functionally, and are not required one for the other. However, no specific provision in the MPEP has been cited to support this argument. The Office has simply stated a conclusion without support or explanation.

The Office has characterized "the remaining pairs" of Groups as unrelated. Citing MPEP § 806.04 and MPEP § 808.01, the Office asserts that these remaining pairs of Groups are unrelated because they are not disclosed as capable of use together, and they have different modes of operation, different functions, or different effects. Applicants submit that "the remaining pairs" is vague. The burden is on the Office to explain and/or provide examples for its restriction for each and every group.

The Office has further restricted the application to SEQ ID NO:3 or 6. Applicants further elect, with traverse, **SEQ ID NO:3**.

Applicants submit that the Office has not met the necessary burden in order to sustain the Restriction Requirement. Withdrawal is therefore respectfully requested.

If the Examiner should have any questions concerning this Response, please contact the undersigned.

Respectfully submitted,



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